

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES F. HOPKINS, JR.,

Plaintiff,

v.

KETTLE FALLS INTERNATIONAL
RAILWAY, LLC, a Colorado
Corporation,

Defendant.

NO: CV 08-348-RMP

ORDER DENYING SUMMARY
JUDGMENT FOR PLAINTIFF

Before the Court is Plaintiff's Motion for Summary Judgment (Ct. Rec. 28).

The Court has heard argument on these issues and reviewed and considered the parties' submissions and the remaining record in this case.

Plaintiff filed a complaint for an injury under the Federal Employers' Liability Act, the Federal Railroad Safety Act, the Federal Safety Appliance Act, and the Code of Federal Regulations (Ct. Rec. 1). Defendant answered Plaintiff's complaint by asserting, among other things, that Plaintiff was contributorily negligent and failed to mitigate his damages (Ct. Rec. 3). Plaintiff moved for partial summary judgment on the issue of Defendant's violation of the Federal

ORDER DENYING SUMMARY JUDGMENT FOR PLAINTIFF ~ 1

1 Safety Appliance Act and Defendant's affirmative defense of contributory
2 negligence.

3 4 **I. BACKGROUND**

5 On April 25, 2005, Defendant Kettle Falls International Railway, LLC
6 ("Kettle Falls") hired Plaintiff James F. Hopkins, Jr. ("Mr. Hopkins") as a
7 brakeman (Ct. Rec. 31 at 2).
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9 On the date of the alleged injury, Mr. Hopkins was working with Charles
10 Emerson ("Mr. Emerson"), a Kettle Falls engineer (Ct. Rec. 31 at 2). Near the end
11 of their shift around 5 a.m., Mr. Hopkins and Mr. Emerson attempted to couple two
12 cars (Ct. Rec. 31 at 2). They made two attempts to couple the cars automatically,
13 but when they stretched the cars by moving the lead car, the cars did not stay
14 attached. Dep. of Hopkins, Aug. 11, 2009 (Ct. Rec. 33-1 at 12); Dep. of Thum,
15 Nov. 17, 2009 (Ct. Rec. 33-1 at 24); Dep. of Emerson, Nov. 17, 2009 (Ct. Rec. 33-
16 1 at 37). Mr. Hopkins alleges that he pulled the cut lever to open the knuckle¹, but
17 when the knuckle would not open on its own he went in between the cars to
18 manually open the knuckle. Dep. of Hopkins, Aug. 11, 2009 (Ct. Rec. 33-1 at 12).
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24 ¹ During oral argument, counsel demonstrated how a cut lever unlocks a knuckle,
25 which is an iron object weighing approximately 80 pounds and is part of the
26 coupling equipment that connects two train cars.
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1 He alleges that when he manually opened the knuckle, the knuckle fell on his right
2 foot and injured it (Ct. Rec. 29 at 2).

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4 No witnesses saw the incident; Emerson was sitting in a car at the time of
5 the alleged injury (Ct. Rec. 29 at 2; Ct. Rec. 31 at 3). After the alleged injury, Mr.
6 Hopkins radioed Mr. Emerson to tell him that the knuckle had fallen on his foot
7 (Ct. Rec. 29 at 2). Mr. Emerson left the car and walked to Mr. Hopkins' location
8 where he saw the knuckle on the ground (Ct. Rec. 29 at 2). Mr. Emerson and Mr.
9 Hopkins then manually coupled the two cars (Ct. Rec. 31 at 3). At the end of their
10 shift when Mr. Hopkins removed his shoe and stocking, Mr. Emerson observed
11 that Mr. Hopkins had a red mark on his right foot, allegedly from the impact of the
12 knuckle (Ct. Rec. 31 at 3).
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16 **II. STANDARD OF REVIEW**

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18 Summary judgment is appropriate "if the pleadings, depositions, answers to
19 interrogatories, and admissions on file, together with the affidavits, if any, show
20 that there is no genuine issue as to any material fact and that the moving party is
21 entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A key purpose of
22 summary judgment "is to isolate and dispose of factually unsupported claims."
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24 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment is "not
25 a disfavored procedural shortcut," but is instead the "principal tool[] by which
26 factually insufficient claims or defenses [can] be isolated and prevented from going
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1 to trial with the attendant unwarranted consumption of public and private
2 resources.” *Id.* at 327.

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4 Summary judgment is inappropriate where sufficient evidence supports the
5 claimed factual dispute or where different ultimate inferences may reasonably be
6 drawn from the undisputed facts. *Miller v. Glenn Miller Productions, Inc.*, 454
7 F.3d 875, 988 (9th Cir. 2006). The moving party bears the initial burden of
8 demonstrating the absence of a genuine issue of material fact. *See Celotex*, 477
9 U.S. at 323. The moving party must demonstrate to the court that there is an
10 absence of evidence to support the non-moving party’s case. *See Celotex*, 477 U.S.
11 at 325. The burden then shifts to the non-moving party to “set out ‘specific facts
12 showing a genuine issue for trial.’” *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ.
13 P. 56(e)). A court will view the evidence in the light most favorable to the
14 nonmoving party. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th
15 Cir. 2000).

20 21 **III. DISCUSSION**

22 Mr. Hopkins has moved for partial summary judgment on the basis of his
23 allegation that the Federal Safety Appliance Act (“SAA”) was violated and that
24 Kettle Falls’ liability is absolute (Ct. Rec. 29 at 8). Mr. Hopkins asserts that the
25 only issues at trial should be causation and damages (Ct. Rec. 29 at 8).
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1 **A. Whether there is a genuine issue of material fact that the SAA was violated.**

2 The Federal Employers' Liability Act ("FELA") "makes railroads liable to
3 their employees for injuries 'resulting in whole or in part from the negligence' of
4 the railroad." *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 160 (2007) (citing 45
5 U.S.C. § 51). Railroad employees may establish a cause of action under the FELA
6 by proving a defendant's negligence or a violation of the SAA. *See Norfolk and*
7 *W. Ry. Co. v. Hiles*, 516 U.S. 400, 408 (1996).

8 The SAA requires railroad cars to be "equipped with . . . couplers coupling
9 automatically by impact, and capable of being uncoupled, without the necessity of
10 individuals going between the ends of the vehicles." 49 U.S.C. § 20302(a)(1)(A).
11 The United States Supreme Court has held "that the SAA creates an absolute duty
12 requiring not only that automatic couplers are present, but also that they actually
13 perform." *Hiles*, 516 U.S. at 408-09. Failure to perform is not dependent on
14 negligence or proof of a defect. *Id.* at 409.

15 If a railroad employee can prove that the absolute duty to perform was
16 breached, an SAA violation occurred and the employee does not have to prove the
17 defendant's negligence. *See Carter v. Atlanta & St. Andrews Bay Ry. Co.*, 338
18 U.S. 430, 434-35 (1949). A plaintiff may assert that the SAA was violated by
19 demonstrating that the couplers failed to couple automatically on impact "on the
20 occasion in question." *Carter*, 338 U.S. at 434 (finding an SAA violation when
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1 two cars failed to couple despite the defendant's claim that the coupler "worked
2 previously and worked subsequently").

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4 However, a defendant can raise a defense that the absolute duty imposed by
5 the SAA was not breached by showing that (1) the coupling equipment was not
6 "properly set" or "in a position" to automatically couple on impact, and (2) a defect
7 did not cause the coupling equipment to become improperly set or prevent
8 coupling. *Hiles*, 516 U.S. at 410; *see also Kavorkian v. CSX Transp., Inc.*, 117
9 F.3d 953, 958 (6th Cir. 1997) (summarizing a defense to an SAA violation). The
10 United States Supreme Court has explained that the SAA's "legislative history
11 contains no suggestion that Congress intended to prevent an employee from going
12 between cars to ensure that the knuckle is open, that the locking pin is set, . . . or
13 that the drawbar is aligned." *Hiles*, 516 U.S. at 410. The Court recognized that an
14 employee may need to take these "preliminary steps" to ensure "proper
15 performance of the coupler." *Id.* at 410 (finding that misaligned drawbars do not
16 violate the SAA because drawbars, which are part of a car's coupling system, often
17 become misaligned or improperly set in "the ordinary course of railroad
18 operations" and this misalignment can prevent cars from coupling); *see also*
19 *Affolder v. N.Y., Chi., & St. Louis R.R. Co.*, 339 U.S. 96, 99 (1950) (explaining that
20 when a coupler is not "placed in [an] open or proper position" to allow for
21 automatic coupling, the SAA is not violated).

1 Conversely, if the coupling equipment is defective and prevents automatic
2 coupling, the absolute duty imposed by the SAA is breached. *See, e.g., O'Donnell*
3 *v. Elgin, J & E. Ry. Co.*, 338 U.S. 384, 394 (1949) (finding an SAA violation when
4 a coupler broke during a switching operation).

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6 In the present case, the parties do not dispute that two cars failed to couple
7 after Mr. Hopkins and Mr. Emerson twice attempted to couple the cars (Ct. Rec. 32
8 at 10); *see also* Dep. of Hopkins, Aug. 11, 2009 (Ct. Rec. 33-1 at 12); Dep. of
9 Thum, Nov. 17, 2009 (Ct. Rec. 33-1 at 24); Dep. of Emerson, Nov. 17, 2009 (Ct.
10 Rec. 33-1 at 37). However, Kettle Falls has set out facts that show a genuine issue
11 for trial as to whether the SAA was violated.

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15 **1. Whether the coupling equipment was “properly set” to allow for automatic**
16 **coupling on impact.**

17 Kettle Falls shows that there is a genuine issue of material fact as to whether
18 the coupling equipment was “properly set” to allow for coupling. Kettle Falls
19 points to Mr. Hopkins’ explanation as to why Mr. Hopkins went in between the
20 cars: “Plaintiff attempted to open the other knuckle to attempt yet another
21 coupling” (Ct. Rec. 29 at 8). In Mr. Hopkins’ deposition, Mr. Hopkins said that he
22 had to “reset the knuckle on the standing car” when he and Mr. Emerson were
23 attempting to couple the cars. Dep. of Hopkins, Aug. 11, 2009 (Ct. Rec. 33-1 at
24 12). Viewing the facts in the light most favorable to Kettle Falls, the cars could
25 have failed to couple because they were not placed in a position to allow for
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1 coupling. Failure to couple is not an SAA violation when a coupler is not
2 “properly set” to allow for coupling. *See Hiles*, 516 U.S. at 410; *Affolder*, 339 U.S.
3 at 99.
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5 **2. Whether a defect caused the coupling equipment to become improperly set**
6 **or prevented the cars from coupling.**

7 Kettle Falls shows that there is a genuine issue of material fact as to whether
8 a defect caused the coupling equipment to be improperly set or prevented the cars
9 from coupling. Kettle Falls sets out two different facts that show that the coupling
10 equipment may not have been defective. Kettle Falls first points to the fact that it
11 was not able to inspect the coupler, so Kettle Falls does not know whether the
12 coupler was actually defective (Ct. Rec. 32 at 10). Kettle Falls also points to Mr.
13 Emerson’s deposition testimony (Ct. Rec. 32 at 11). During deposition, Mr.
14 Emerson testified that “[t]he coupling device was just fine because we put [the
15 knuckle] back in.” Dep. of Emerson, Nov. 17, 2009 (Ct. Rec. 33-1 at 39). Kettle
16 Falls asserts that the fact that Mr. Hopkins and Mr. Emerson were able to manually
17 couple the cars suggests that the coupling equipment was not defective (Ct. Rec. 32
18 at 11).
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24 Mr. Hopkins argues that there is no issue of material fact that the knuckle,
25 which is part of the coupling system, was defective (Ct. Rec. 29 at 8). Mr.
26 Hopkins points to the deposition testimony of Mr. Thum, the president of Kettle
27 Falls, in which he said that the a knuckle could not fall out of the coupling device
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1 unless there was a defective knuckle pin (Ct. Rec. 29 at 8). Since the knuckle fell,
2 Mr. Hopkins concludes that a defective knuckle pin explains the failed coupling
3 (Ct. Rec. 34 at 6). While it is clear that a defective knuckle pin can cause a
4 knuckle to fall, it is not clear whether a defective knuckle pin can cause the
5 coupling equipment to be improperly set or prevent the cars from coupling. The
6 SAA only addresses defects that affect the ability to couple. In this case, it is
7 unclear why the cars failed to couple properly.
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10 Even viewing the evidence in the light most favorable to Kettle Falls, there
11 is a question of fact as to whether the coupler was defective and caused the failure
12 to couple as required by the SAA, or whether the coupling equipment was
13 improperly set. Therefore, the Court finds that there are issues of material fact as
14 to whether the SAA was violated.
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18 **B. Whether Defendant's affirmative defenses are viable as a matter of law.**

19 A violation of the SAA "eliminates contributory negligence as a
20 consideration for any purpose." *Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500,
21 507, note 13, (1957) (citing *Carter*, 338 U.S. 430; *Myers v. Reading Co.*, 331 U.S.
22 477 (1947)). The relevant statute, cited by both Kettle Falls and Mr. Hopkins,
23 provides:
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26 In all actions on and after April 22, 1908 brought against any such
27 common carrier by railroad under or by virtue of any of the provisions
28 of this chapter to recover damages for personal injuries to an
employee, or where such injuries have resulted in his death, the fact

1 that the employee may have been guilty of contributory negligence
2 shall not bar a recovery, but the damages shall be diminished by the
3 jury in proportion to the amount of negligence attributable to such
4 employee: *Provided*, That no such employee who may be injured or
5 killed shall be held to have been guilty of contributory negligence in
6 any case where the violation by such common carrier of any statute
enacted for the safety of employees contributed to the injury or death
of such employee.

7 45 U.S.C. § 53 (emphasis in original).

8 Contributory negligence is available as an affirmative defense where there is
9 no violation of an applicable safety statute. 45 U.S.C. § 53. Since this Court has
10 found that there are issues of material fact as to whether the SAA was violated, the
11 affirmative defense of contributory negligence is still viable as a matter of law.
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13 IV. CONCLUSION

14 The Court finds that there are issues of material fact as to whether the SAA
15 was violated that make summary judgment inappropriate. Therefore,
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17 IT IS HEREBY ORDERED THAT:

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- 19 1. Plaintiff's Motion for Summary Judgment (Ct. Rec. 28) is **DENIED**.
 - 20 2. The District Court Executive is hereby directed to enter this Order and
21 furnish copies to counsel.
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23 **DATED** this 6th day of December, 2010.
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25
26 s/ Rosanna Malouf Peterson
27 ROSANNA MALOUF PETERSON
28 United States District Court Judge